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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/593,235

11/03/2006

Eric Barbier

129479

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04/02/2009

OLIFF & BERRIDGE, PLC

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EXAMINER

SALMON, DEVIN RAE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/593,235	Applicant(s) BARBIER ET AL.	
	Examiner Devin Oakes	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/03/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/18/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 4 and 6** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. **Claim 4** recites the limitation "the area of weakness" in the second line. There is insufficient antecedent basis for this limitation in the claim.
4. **Claim 6** recites the limitation "the housing" in the second line. There is insufficient antecedent basis for this limitation in the claim.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. **Claims 1, 7, and 8** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim1 of U.S. Patent No. 7,210,848 in view of Steffens, Jr. et al. (US 5,167,608). Barbier et al. fails to disclose that the system is characterized in that, before the system is used for the first time, the opening is closed at least partly by a layer of material and in that the slider comprises a cursor directed toward the opening and capable of at least partly destroying the layer of material to open the opening when the slider is moved for the first time.

7. However, Steffens, Jr. et al. teaches an opening/closing system for a packaging bag that is characterized in that, before the system is used for the first time, the opening (19) is closed at least partly by a layer of material (32) and in that the slider (16) comprises a cursor (31) directed toward the opening and capable of at least partly destroying the layer of material to open the opening when the slider is moved for the first time (Column 3 line 23- Column 4 line 16).

8. It would have been obvious to one of ordinary skill in the art to combine the teachings of Steffens, Jr. et al. with the closure of Barbier et al. since doing so would provide the closure with a easy way to penetrate the layer of material.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. **Claims 1 and 7** are rejected under 35 U.S.C. 103(a) as being unpatentable over Glidden (US 1,734,479) in view of Webber (US 624,586) and further in view of Steffens, Jr. et al. (US 5,167,608).

13. **Regarding Claim 1**, Glidden discloses an opening/closing system of the type that comprises a planar base part (3) defining at least in part an opening through itself, this base part comprising guide means (7) parallel to the opening and engaging with guide means belonging to a slider (18) designed to close the opening or leave it open,

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but fails to disclose that the system is particularly for packaging bags or that the system is characterized in that, before the system is used for the first time, the opening is closed at least partly by a layer of material and in that the slider comprises a cursor directed toward the opening and capable of at least partly destroying the layer of material to open the opening when the slider is moved for the first time.

14. However, Webber teaches a shoe fastener similar to that of Glidden and discloses that the fastener could be used on articles other than shoes (Column 1, lines 14-19).

15. It would have been obvious to one of ordinary skill in the art that based on the teachings of Webber the opening/closing system of Glidden could be used on packaging bags since doing so would provide an alternative fastener to bags.

16. Glidden in view of Webber fails to disclose that the system is characterized in that, before the system is used for the first time, the opening is closed at least partly by a layer of material and in that the slider comprises a cursor directed toward the opening and capable of at least partly destroying the layer of material to open the opening when the slider is moved for the first time.

17. However, Steffens, Jr. et al. teaches an opening/closing system for a packaging bag that is characterized in that, before the system is used for the first time, the opening (19) is closed at least partly by a layer of material (32) and in that the slider (16) comprises a cursor (31) directed toward the opening and capable of at least partly destroying the layer of material to open the opening when the slider is moved for the first time (Column 3 line 23- Column 4 line 16).

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18. It would have been obvious to one of ordinary skill in the art to combine the teachings of Steffens, Jr. et al. with the closure of Glidden in view of Webber since doing so would provide the closure with a easy way to penetrate the tamper-evident feature.

19. **Regarding Claim 7**, Glidden in view of Webber in view of Steffens Jr discloses a packaging bag equipped on at least one of its walls with an opening/closing system as claimed in claim 1.

20. **Claims 2-4** are rejected under 35 U.S.C. 103(a) as being unpatentable over Glidden in view of Webber in view of Steffens Jr and further in view of Buchman et al. (US 2001/0053153).

21. **Regarding Claim 2**, Glidden in view of Webber in view of Steffens Jr fails to disclose that the layer of material is part of the same molding as the base part.

22. However, Buchman discloses an opening/closing system for a packaging bag wherein the layer of material is part of the same molding as the base part. Wherein the base part is considered to be the flanges (37, 39) that the channel members are mounted to and the layer of material is the tamper evident feature (70) (Figure 4).

23. It would have been obvious to one of ordinary skill in the art to provide the layer of material as part of the same molding as the base part since doing so would allow the channel members to be mounted to either side of the packaging material and yet the tamper evident feature would still be present.

24. **Regarding Claim 3**, Glidden in view of Webber in view of Steffens Jr fails to disclose that the layer of material has an area of weakness where it is thinner.

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25. However, Buchman discloses that the layer of material/tamper evident feature (70) has an area of weakness (72) where it is thinner because of a laser score line (Figure 4 and [0068]).

26. It would have been obvious to one of ordinary skill in the art to provide an area of weakness where it is thinner in the layer of material since doing so would allow for easier penetration of the tamper evident feature.

27. **Regarding Claim 4**, Glidden in view of Webber in view of Steffens Jr fails to disclose that the area of weakness extends approximately the full length of the opening.

28. However, Buchman discloses that the area of weakness (72) extends approximately the full length of the opening (Figure 4 and [0068]).

29. It would have been obvious to one of ordinary skill in the art to have the area of weakness extend the full length of the opening since doing so would provide for easy penetration of the material over the entire length of the opening.

30. **Claims 5 and 6** are rejected under 35 U.S.C. 103(a) as being unpatentable over Glidden in view of Webber in view of Steffens Jr and further in view of Buchman et al. (US 6,287,000).

31. **Regarding Claim 5**, Glidden in view of Webber in view of Steffens Jr. fails to disclose a housing for the cursor is provided in the layer of material, the dimensions of this housing being slightly less than the dimensions of the cursor, and the latter being force-fitted into the housing.

32. However, Buchman discloses a slider having a cursor that is optionally moveable from an inactive position to an active position (Column 5, lines 20-25).

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33. It would have been obvious to one of ordinary skill in the art to simply always have the cursor in the active position which would create a housing for the cursor in the layer of material such that the cursor would be force fitted into it when applied to the packaging since doing so would simplify the manufacturing of the slider and cursor as It could be molded as a single solid unit.

34. **Regarding Claim 6**, Glidden in view of Webber in view of Steffens Jr. fails to disclose that the housing is situated at one end of the opening, and the cursor faces this housing in the closed position of the cursor.

35. It would have been obvious to one of ordinary skill in the art to have the initial position of the cursor and therefore the housing located at one end of the opening as it is well known in the art for the initial position of a slider to be located at an end of the closure rather than the middle.

36. **Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over Glidden in view of Webber in view of Steffens Jr and further in view of Yeager (US 6,652,436).

37. **Regarding Claim 8**, Glidden in view of Webber in view of Steffens Jr fails to disclose in that the opening/closing system is attached to the inside face of one wall of the bag by the planar base part, the slide being situated on that side of the planar base which is turned toward the wall, and the system being positioned in a precut hole formed in the wall.

38. However, Yeager discloses an opening/closing system (22) that is attached to the inside face of one wall of the bag by the planar base part (32,34), the slide (40)

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being situated on that side of the planar base which is turned toward the wall, and the system being positioned in a precut hole (24) formed in the wall (Figure 2).

39. It would have been obvious to one of ordinary skill in the art that the opening/closing system of Glidden in view of Webber in view of Steffens Jr could be placed on the inside face of one wall of the bag since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. In re Einstein, 8 USPQ 167. The limitation that it be placed in a pre cut hole would also have been obvious since access to the slider would be required to operate it.

40. **Claims 9 and 10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Glidden in view of Webber in view of Steffens Jr and further in view of Yeager (US 6,177,172).

41. **Regarding Claims 9 and 10**, Glidden in view of Webber in view of Steffens Jr discloses the claimed device except for the film of the bag being equipped with plural closing systems and packaged as a roll.

42. However, Yeager discloses that it is known in the art to provide a rolled bag film with a plurality of closing systems.

43. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bag film of Yeager et al. as a rolled bag film with a plurality of closing systems, in order to provide different manufacturers with a film that can be readily formed into a bag.

Conclusion

44. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Troup et al (US 2,994,469); Manolizi et al. (US 6,074,094); May (US 6,059,456); Freund et al (US 2,563,929); Ashbeck (US 4,541,117); Schmitt (US 631,532); Tilman (US 5,211,482).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devin Salmon whose telephone number is (571)270-7111. The examiner can normally be reached on Monday thru Thursday, 9:30 A.M. to 5:30 P.M. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Devin Salmon/
Examiner, Art Unit 3782

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782